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May 22, 2015

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VIA E-MAIL

Re: Otay Ranch Village 13 Master Planned Community – Resort Village: PDS2004-3800-04-003; PDS2004-3810-04-002; PDS2004-3600-04-009; PDS2004-3100-5361A & B; Log No. PDS2004-04-19005; SCH No. 2004101058

Greetings:

On behalf of Endangered Habitats League and concerned area residents, I hereby submit these comments on the Otay Ranch Village 13 Master Planned Community – Resort Village (the “Project”) and the Draft Environmental Impact Report for the Project SCH No. 2004101058.

O-14-1

The California Environmental Quality Act (“CEQA”) was adopted as a disclosure and transparency document. The theory is that by providing a document that adequately describes the environmental consequences of a project to decision makers and the public, the decision makers will make a rational decision based upon the true environmental consequences of the project and if they do not, the electorate can hold them accountable for their decisions. The core of this statutory structure is the adequacy of the document as an informational document.

O-14-2

The EIR fails to adequately evaluate project impacts, including but not limited to/from air quality, biology, climate change, hazards, noise, solid waste, traffic, and utilities. (Public Resources Code § 21002.1(a), (e); State CEQA Guidelines §§ 15128, 15126, 15123.)

O-14-3

Overall, the EIR for this project fails as an informational document. The EIR misleads decisionmakers and the public as to the extent and severity of the Project’s environmental effects. The EIR is also often conclusory, making findings without evidentiary support as to the extent of project impacts and the potential mitigation. The findings are not support by substantial evidence in the record.

O-14-4 CEQA also requires that where feasible mitigation exists which can substantially lessen the environmental impacts of a project, **all feasible mitigation** must be adopted. In this way CEQA goes beyond its informational role to require that projects substantively lessen their negative effects on the environment. It is critical to proper drafting of an EIR that all feasible mitigation measures be required of a project. This has not been done with this Project. Additional mitigation is feasible and should be required of this project, particularly given the Project's impacts to air quality on nearby residential uses.

O-14-5 Moreover, all mitigation measures required in the EIR must be fully enforceable and certain to occur. The proposed mitigation here is vague, uncertain, and improperly defers mitigation measures (e.g. preparation of future noise studies). This is unacceptable.

O-14-6 The EIR also fails to evaluate an adequate range of reasonable alternatives and mostly considers alternatives with a development footprint on the western portion of the Project site. Additional alternatives should be considered that are feasible and achieve most Project objectives such as focusing development on the eastern portion of the Project site, or otherwise reducing the scope of the Project.

Of the alternatives considered in the DEIR, Alternative G must be adopted in lieu of the proposed Project where it reduces most project impacts to/from aesthetics, air quality, biological resources, cultural resources, noise, and transportation/traffic while achieving the majority of Project objectives.

O-14-7 The DEIR does not disclose whether any future development of the Birch Family Estate Parcel, which was originally included within Village 13 but is not a part of the Project, is reasonable foreseeable. To the extent that development of the Birch Family Estate Parcel (135 acres included within Village 13) is known or reasonably anticipated, the proposed development must be analyzed in conjunction with the proposed Project. Development of this site would allow 128 single family homes under current land use designations, and access to the Birch Family Estate Parcel would be through the proposed Otay Ranch Preserve.

Project Summary

O-14-8 The Project is mixed-use development proposed for an undeveloped 1,869-acre site located on Otay Lakes Road in southwestern San Diego County (County), east of Chula Vista. (DEIR S-1) The Project is located in the Jamul Mountain foothills, and the Project site topography is characterized by a broad mesa sloping to the south, broken by several steep canyons draining from north to south. The Project site is currently vacant with native coastal sage scrub, disturbed grassland habitats, and riparian vegetation in drainages. Project site elevations for areas of propose development range from 500 feet AMSL at the southern end of the property to approximately 900 feet AMSL in the northeastern neighborhoods. (DEIR p. 1.0-29)

The Project site is within the Otay Ranch community and is described as "Village 13/Resort Village" in the Otay Subregional Plan (Otay SRP). (DEIR p. 1.0-3) The San Diego County

Board of Supervisors and the Chula Vista City Council jointly prepared and certified the Otay Ranch Program EIR 90-01 (PEIR) and approved the Otay Ranch Project, including the Otay SRP in 1993. (DEIR p. 1.0-2) The Otay SRP, which was amended in 2001, states the permitted uses within Village 13/Resort Village include hotel uses with up to 800 rooms, shops, restaurants, and conference facilities; a maximum of 658 single-family residential homes and 1,408 multi-family residential homes; two neighborhood parks; commercial areas; and a possible golf course with up to 27 holes. The Village 13/Resort Village included the Birch Family Estate Parcel, but the Birch Family Estate Parcel is not included as part of the Project. Therefore, within the Project site the Otay SRP permits 530 single-family residential homes and 1,408 multi-family residential homes. (DEIR p. 1.0-3) The EIR for the Project tiers from the previously certified PEIR. (DEIR p. 1.0-29)

O-14-8
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Neighboring land uses to the Project site include the Eastlake Vistas residential community and U.S. Olympic Training Center to the west, Lower Otay Lake to the south, Upper Otay Lake to the northwest, an ultra-light gliding and parachuting airport at the east end of Lower Otay Lake, the MSCP Preserve to the north, and the City of San Diego's MSCP "Cornerstone Lands" to the south. The Project site is located upstream of Savage Dam, which creates Lower Otay Lake, and is within the watershed for the Otay River, with drains an area of approximately 145 square miles. (DEIR p. 1.0-29)

The Project's proposed development includes: 1,881 single-family residences on 525 acres; 14-acre mixed use site that include 57-multi-family residences and up to 20,000 square feet of commercial use; 29 acres of park land; 17-acre resort site including 200 guest rooms and up to 20,000 square feet of commercial use; two-acre public safety site for a fire station; 10-acre elementary school site; 144 acres of manufactured open space; 1,089 acres of preserve open space and 39 acres for roadways. (DEIR S-1) The projected potable water demand for the Specific Plan is 1.42 million gallons per day (mgd), or approximately 1,590 acre-feet per year (afy). (DEIR p. 1.0-15)

The Project and will require approximately 14.2 million cubic yards of cut and fill in a balanced grading operation. The Specific Plan design will require grading to create terraces for development with manufactured slopes—some up to approximately 140 feet—located between neighborhoods, at the rear of residential lots, and along Otay Lakes Road and the internal streets. The DEIR states that blasting and rock crushing will occur on the northern and eastern portions of the Project site for approximately 49 days during construction. (DEIR p. 1.0-12)

The Project permit applications include: a General Plan Amendment that would amend the Regional Category and Land Use Designation, the General Plan Mobility Element, Otay Ranch Subregional Plan ("SRP"), and Otay Ranch Resource Management Plan (GPA 04-003); a Specific Plan to describe the Project land uses, public facilities and services, development regulations, and project implementation strategies (SP 04-002); a Zone Reclassification to reflect changes in the development footprint from that originally anticipated (REZ 04-009); and a Tentative Map to implement the proposed Project (TM5361A and TM5361B). According to the DEIR, general plan amendments are needed to resolve inconsistencies between the Project and County General Plan and Otay SRP; among other issues, the Project proposes shifting the

housing mix from 520 single-family residential homes and 1,408 multi-family residential homes to 1,881 single family residence and 57 multi-family residences. The applicant is also proposing a boundary adjustment to the County MSCP Subarea Plan South County Segment, an amendment to the Otay Ranch Phase 1 RMP, and adoption/amendment of the Otay Ranch Phase 2 RMP to resolve conflicts with the Otay Ranch RMP, and the County MSCP Subarea Plan South County Segment. (DEIR pp. 1.0-30–1.0-31)

O-14-8
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The DEIR concludes that the Project would encourage and facilitate economic activity in the area surrounding the Project site, but growth-inducing impacts are less than significant. Because the Otay Ranch PEIR identified potentially significant-growth inducing impacts and the Project does not include the previously analyzed golf course, would reduce the number of hotel rooms, and would reduce the overall development footprint, the DEIR states growth-inducing impacts do not need to be restated in the Project EIR. (DEIR p. 1.0-36)

Air Quality

The analysis of construction air quality impacts assumes that construction will occur through various phases over an 11-year period. (DEIR p. 1.0-20) However, construction phasing is **not** required, so that at any one time far greater construction effects could be felt. Furthermore, the estimated equipment amount is not the set maximum, and additional equipment may be used to construct faster. Overlap of “phases” and equipment use must be considered in determining predicted effects. The DEIR fails as an informational document by relying on, but not requiring, phasing of construction. A mitigation measure must be adopted ensuring construction phasing in order to ensure that the assumptions of the DEIR are used in implementation of the project.

O-14-9

In addition, the DEIR states that construction emissions of VOC, NO_x, CO, PM₁₀, and PM_{2.5} and operational emissions of VOC, CO, and PM₁₀ have potentially significant direct and cumulative impacts. Mitigation is proposed for the Project, however direct and cumulative impacts for construction and operational emissions will not be fully mitigated.

Mitigation will reduce construction emission, but maximum daily emissions will still exceed Screening Level Thresholds by 21.15 lbs/day of VOC, 774.28 lbs/day of NO_x, 3,080.45 lbs/day of CO, 4,642.94 lbs/day of PM₁₀, and 400.27 lbs/day of PM_{2.5}. (DEIR p. 2.2-26)

O-14-10

Maximum daily area source, energy use, and motor vehicle emissions would also exceed Screening Level Thresholds in the summer and winter despite mitigation. With mitigation, summertime maximum daily operational emissions would still exceed Screening Level Thresholds by 117.6 lbs/day of VOC, 173.36 lbs/day of CO, and 36.11 lbs/day of PM₁₀. With mitigation, wintertime maximum daily operational emissions would exceed Screening Level Thresholds by 121.37 lbs/day of VOC, 210.92 lbs/day of CO, and 36.11 lbs/day of PM₁₀. (DEIR p. 2.2-27)

Although air quality impacts are significant and unavoidable, all feasible mitigation must be adopted to reduce these effects to the greatest extent possible. Especially where the nearest sensitive receptors are 1,700 feet from the Project site.

The following mitigation should be adopted for the Project:

Construction:

1. Gravel pads must be installed at all access points to prevent tracking of mud onto public roads.
2. Install and maintain trackout control devices in effective condition at all access points where paved and unpaved access or travel routes intersect (e.g. install wheel shakers, wheel washers, and limit site access).
3. All roadways, driveways, sidewalks, etc. shall be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
4. Pave all construction roads.
5. Limit fugitive dust to 20 percent opacity.
6. Require a dust control plan for earthmoving operations.
7. When materials are transported off-site, all material shall be covered, effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.
8. The contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite.
9. Post a publicly visible sign with the telephone number and person to contact regarding dust complaints. This person shall respond and take corrective action within 24 hours.
10. Extend grading period sufficiently to reduce air quality impacts below a level of significances.
11. The simultaneous disturbance of the site shall be limited to five acres per day.
12. Implement activity management techniques including a) development of a comprehensive construction management plan designed to minimize the number of large construction equipment operating during any given time period; b) scheduling of construction truck trips during non-peak hours to reduce peak hour emissions; c) limitation of the length of construction work-day period; and d) phasing of construction activities.*
13. Develop a trip reduction plan to achieve 1.5 AVR for construction employees.
14. Restrict engine size of construction equipment to the minimum practical size.*
15. Use methanol-fueled pile drivers.*
16. All forklifts shall be electric or natural gas powered.*
17. Suspend use of all construction equipment operations during second stage smog alerts.*
18. Require preparation of a traffic control plan.*

O-14-11

19. Provide temporary traffic controls such as a flag person, during all phases of construction to maintain smooth traffic flow.*
20. Provide dedicated turn lanes for movement of construction trucks and equipment on- and off-site.*
21. Reroute construction trucks away from congested streets and sensitive receptor areas.*
22. Configure construction parking to minimize traffic interference.*
23. Prior to the issuance of a grading and building permit, the applicant shall submit verification that a ridesharing program for the construction crew has been encouraged and will be supported by the contractor via incentives or other inducements.
24. Implement a carpool program for construction workers.*
25. Minimize construction worker trips by requiring carpooling and providing for lunch onsite, and/or provide shuttle service to food service establishments/commercial areas for the construction crew.*
26. Provide shuttle service to transit stations/multimodal centers for the construction crew.
27. Develop a Low-impact Construction Commuting Plan for all tradespersons to utilize during Project construction. This Plan shall address the home to office/shop commute and office/shop to jobsite commute and increase carpooling and other commuting efficiencies during construction.*
28. Require the use of Zero-VOC paints, coatings, and solvents.

(*Would reduce impacts to GHGs as well)

Operation

1. Electrical powered equipment should be utilized in-lieu of gasoline-powered engines where technically feasible.*
2. Utilize only electrical equipment for landscape maintenance.*
3. Provide preferential parking locations for EVs and CNG vehicles.*
4. Plant shade trees in parking lots to provide minimum 50 percent cover to reduce evaporative emissions from parked vehicles.*
5. Plant at least 50 percent low-ozone forming potential (Low-OFP) trees and shrubs, preferably native, drought-resistant species, to meet county landscaping requirements.*
6. Plant Low-OFP, native, drought-resistance tree and shrub species 20 percent in excess of that already required by county ordinance. Consider roadside, sidewalk, and driveway shading.*
7. Orient 75 percent or more of homes and buildings to face either north or south (within 30 degrees of N/S) and plant trees and shrubs that shed their leaves in winter nearer to these structures to maximize shade to the building during the summer and allow sunlight to strike the building during the winter months.*

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8. Provide grass paving, tree shading, or reflective surface for unshaded parking lot areas, driveways, or fire lanes that reduce standard black asphalt paving by 10 percent or more.*
9. Prohibit gas powered landscape maintenance equipment within residential, commercial, and mixed-use developments. Require landscape maintenance companies to use battery powered or electric equipment **or** contract only with commercial landscapers who operate with equipment that complies with the most recent California Air Resources Board certification standards, or standards adopted no more than three years prior to date of use or any combination of these two themes.*
10. Implement parking cash-out program for non-driving employees.*
11. Require each user to establish a carpool/vanpool program.*
12. Create a light vehicle network, such as a neighborhood electric vehicle (NEV) system.*
13. Provide preferential parking for carpool/vanpool vehicles.*
14. Provide subsidies or incentives to employees who use public transit or carpooling, including preferential parking.*
15. Provide direct, safe, attractive pedestrian access from project to transit stops and adjacent development.*
16. Provide direct safe, direct bicycle access to adjacent bicycle routes.*
17. Connect bicycle lanes/paths to city-wide network.*
18. Design and locate buildings to facilitate transit access, e.g., locate building entrances near transit stops, eliminate building setbacks, etc.*
19. Construct transit facilities such as bus turnouts/bus bulbs, benches, shelters, etc.*
20. Provide a display case or kiosk displaying transportation information in a prominent area accessible to employees.
21. Provide shuttle service to food service establishments/commercial areas.*
22. Provide shuttle service to transit stations/multimodal centers.*
23. Provide on-site child care or contribute to off-site child care within walking distance.*
24. Implement a compressed workweek schedule.*
25. Implement home-based telecommunicating program, alternate work schedules, and satellite work centers.*
26. All buildings shall be constructed to LEED Platinum standards.*
27. Design buildings for passive heating and cooling and natural light, including building orientation, proper orientation and placement of windows, overhangs, skylights, etc.*
28. Construct photovoltaic solar or alternative renewable energy sources sufficient to provide 100% of all electrical usage for the entire Project.*
29. Install an ozone destruction catalyst on all air conditioning systems.*

O-14-11
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30. Construct renewable energy sources sufficient to offset the equivalent of 100% of all greenhouse gas emissions from mobile sources (internal combustion engines) for the entire Project. *

O-14-11
Cont.

31. Purchase only green/ renewable power from the electric company.*

32. Install solar water heating systems to generate all hot water requirements.*

(* Would reduce impacts to GHGs as well)

Biological Resources

O-14-12

The latest biological surveys appear to have been conducted in 2009; surveys should be updated.

O-14-13

Biological mitigation is inadequate to the extent that measures rely on future studies and do not contain enforceable standards. By way of example, M-BI-9b requires a future survey but does not require or specify standards for the long-term maintenance of Quino checkerspot butterfly habitat or populations. The conclusion that impacts to the Quino checkerspot butterfly will be less than significant after mitigation is not supported by evidence in the DEIR.

O-14-14

The DEIR fails to analyze indirect effects to the golden eagles' foraging habitat. The DEIR limits its analysis to indirect impacts to sensitive wildlife species and does not discuss whether golden eagles would continue to use the preserve area of the Project site as foraging habitat. There is not sufficient evidence that impacts to the golden eagle foraging habitat would be reduced to less than significant levels by the on-site preservation and Otay Ranch RMP. Absent substantial evidence to support this conclusion, impacts to golden eagle habitat must be deemed significant.

O-14-15

Additionally, the cumulative impact analysis of biological effects is greatly deficient. There is no evidence in the DEIR that cumulative impacts to the Quino checkerspot butterfly will be reduced to a level of less than significance by merely mitigating the direct significant impacts to the Quino checkerspot butterfly. Moreover, there is no evidence that project-specific mitigation will reduce the significant cumulative impacts of the cumulative projects discussed in the DEIR.

Climate Change

O-14-16

Despite resulting in significant construction and operational air quality impacts, the DEIR finds that global climate change impacts from greenhouse gases (GHG) are less than significant and that *no* mitigation measures are necessary. These conclusions are not supported.

Construction

O-14-17

Construction of the Project will result in the generation of 977 metric tons of CO₂e per year (MTCO₂e), when amortized over 30 years. The Project with its new source of GHGs cannot be consistent with State goals to reduce emissions ("To meet the GHG emission target of AB 32 [] California would need to generate fewer GHG emissions in the future than current levels.") Thus, as the Project represents a new source of GHG emissions, the Project must adopt mitigation for the potentially significant impacts. Items marked with an asterisk above also

O-14-17 | reduce greenhouse gas emission during construction. In short, mitigation is available and must be
Cont. | adopted.

Operation

O-14-18 | Global climate change impacts must be deemed significant. The Project will create approximately 31,755 MT CO₂e at full buildout in 2025. (DEIR p. 3.8-17) This Project represents a new source of significant GHGs impacts and mitigation is required.

O-14-19 | Impacts must also be deemed significant pursuant to the CEQA Guidelines thresholds of significance. Existing emissions are zero MT CO₂e; the Project's emissions are roughly 31,755 MT CO₂e. This is a significant impact. The DEIR incorrectly concludes, "because climate change occurs on a global scale, it is not meaningfully possible to quantify the scientific effect of new GHG emissions caused by a single project" (DEIR p. 3.8-17) "The [Sacramento Metropolitan Air Quality Management] District recognizes, however, that although there is no known level of emissions that determines if a single project will substantially impact overall GHG emission levels in the atmosphere, a threshold must be set to trigger a review and assessment of the need to mitigate project GHG emissions." (SMAQMD, CEQA Guide p. 6-10 – 6-10, November 2014 <<http://www.airquality.org/ceqa/cequguideupdate/Ch6ghgFINAL.pdf>>.) The BAAQMD and SMAQMD have adopted a threshold of 1,100 MT CO₂e to determine operational GHG impacts. (*Id.* at 6-10; Bay Area Air Quality Management District, CEQA Air Quality Guidelines, p. 4-7, May 2011 <<http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines%20May%202011.ashx?la=en>>.) The SCAQMD proposed a 1,400 MT CO₂e threshold to evaluate impacts from GHG emissions. The Project's operational emissions exceed this threshold; as such GHG impacts are significant.

O-14-20 | Impacts must be deemed significant as the Project does not support or further the County General Plan policies relative to emissions reductions. The Project is not consistent with the regulations in that it does not reduce vehicle trips generated, gasoline/energy consumption, and greenhouse gas emissions. Specifically, the Project is not consistent with general plan policies in that it creates leapfrog development by placing a new village outside established water service boundaries. (General Plan Policy LU-1.2) Per the threshold of significance, GHG impacts are significant.

O-14-21 | Because climate change impacts are significant, mitigation must be adopted. Proposed mitigation measures in the air quality discussion above marked with an asterisk can be used to mitigate GHG emissions. Additionally, California Governor Jerry Brown issued Executive Order B-30-15 on April 29, 2015 to establish a California greenhouse gas reduction target of 40 percent below 1990 levels by 2030. (<http://gov.ca.gov/news.php?id=18938>) The DEIR should evaluate whether the Project's post-buildout GHG emissions trajectory would impede attainment of the 2030 goal identified in Executive Order B-30-15. The climate change impacts should be reevaluated to consider the 40 percent reduction below 1990 levels by 2030 and the EIR must be recirculated.

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Geology and Soils

O-14-22

The Project has the potential for significant impacts to geology and soils due to unstable slopes and the potential for rock fall hazards on cut and natural slopes. (DEIR p. 2.5-10) The DEIR states “all Project-specific geotechnical impacts would be avoided or reduced below identified significance thresholds through conformance with the mitigation measures proposed in Section 2.5.5 and **through conformance with geotechnical recommendations in Appendices C-6, C-7, and C-8** and established regulatory requirements.” (DEIR p. 2.5-12) Although mitigation would be implemented in compliance with the Project Geotechnical Reports (Appendices C-6, C-7, and C-8), the mitigation measures do not require adherence with the geotechnical reports’ recommendations. Without requiring that the Project actually implement the recommendations of the geotechnical report impacts are not properly mitigated and remain significant.

Hydrology and Water Quality

O-14-23

The analysis of urban runoff was prepared in 2012; this analysis should be updated. To the extent that the Project relies on design features to reduce impacts from storm water runoff to Low Otay Lake, these features must be incorporated as enforceable mitigation measures. The DEIR should not consider Treatment Control BMPs related to the proposed widening of Otay Lakes Road where the road is outside the jurisdiction of the County as the City of Chula Vista’s approval is needed to implement this road improvements.

Hazards and Hazardous Materials

O-14-24

The Project site is at high risk from wildland fire hazards due to the proximity of proposed development adjacent to open space which is characterized by dry chaparral. (DEIR p. DEIR p. 2.6-20) Moreover, the Project site is located within a very high fire hazard severity zone in a State Responsibility Area (SRA).

(http://frap.fire.ca.gov/webdata/maps/san_diego/fhszs_map.37.pdf) The Office of Planning and Research (OPR) is required to recommend proposed changes to the initial study checklist of the CEQA Guidelines to include questions related to fire hazard impacts for projects located on lands classified as state responsibility areas or very high fire hazard severity zones. (Pub. Res. Code § 21038.01.) The OPR has not yet released its updated to the CEQA Guidelines per Public Resources Code section 21038.01. However, because the Project site is located within a very high fire hazard severity zone in a SRA, impacts from fire hazards should be considered significant.

O-14-25

A Project that does not meet the travel time standard in the County’s General Plan may result in potentially significant impact and may present significant risk of loss, injury, or death. The DEIR finds that without additional fire facilities, the San Diego Rural Fire Protection District (RFPD) could not meet the County’s 5-minute travel time standard for Otay Ranch, which would result in a significant impact. (*See* DEIR p. 2.6-23) The DEIR states a temporary fire station would be established to meet the 5-minute travel time standard. To the extent that impacts from wildfire hazards are mitigated by relying on certain project design features such as the temporary fire station, these features must be adopted as enforceable CEQA mitigation.

O-14-26 | The is no evidence in the DEIR regarding hazards from ultralight aircraft fly to/from John Nicol's Field Airfield. The DEIR only discusses jump plane activity and lacks a meaningful analysis of airport hazard that would disclose potential effects to the public and decision-makers.

Noise

O-14-27 | The Project is expected to cause significant noise impacts during construction and operation. The DEIR contains a typo where it states that construction is anticipated to occur over a period of 10 years rather than the 11 year timeline used elsewhere in the DEIR. (DEIR p. 2.7-16) As stated above, there is no requirement in the DEIR that construction occur in phases. Moreover, the DEIR indicates that the grading phases will potentially overlap. (DEIR p. 2.7-17) Thus reliance on phasing in the noise analysis is improper and misleads decisionmakers and the public as to the full extent of construction noise impacts.

O-14-28 | Noise mitigation is inadequate, unenforceable, and not demonstrated to be effective. By way of example, M-N-1c does not demonstrate that interior noise levels will be less than the 45 dB threshold. Also for example, M-N-1 is based on the preparation of future studies and does not demonstrate that noise levels will be less-than significant following preparation of the studies. Additionally, M-N-1e requiring residents to operate air conditioners to ensure that interior noise levels do not exceed 45 dB is not acceptable mitigation under CEQA. This measure is not practical for residents; it is not shown to be effective (noise levels are only "anticipated" to be less than 45 dB); and, the measure itself calls for increased energy consumption in order to alleviate noise impacts, which is contrary to other EIR goals of energy conservation. Moreover, this measure conflicts with a natural desire to have open windows and leaves residents with the choice of open windows and unacceptable noise levels or closed windows and air conditioning on, running up the electricity bill.

O-14-29 | M-N-2 and M-N-3 improperly defer mitigation of project-generated airborne noise impacts from stationary activities.

O-14-30 | M-N-4 and M-N-5 states that blasting shall not exceed 0.1 in/sec peak particle velocity (PPV) at the nearest occupied residence, but these measures do not specify how the PPV will not be exceeded. These mitigation measures also require a minimum 1,000 ft. setback for blasting and 800 ft. setback from rock drilling from the nearest on- or off-site sensitive receptors, but the DEIR states that the location of these activities is currently unknown and could potentially occur at any location on the Project-site. (DEIR p. 2.7-17) As the Project proposes phasing, the nearest on-site residences could potentially be less than 800 ft. from locations where rock drilling and blasting will be necessary and it is uncertain that impacts will be reduced to less than significant levels.

O-14-31 | The mitigation required of this Project to reduce noise impacts does not incorporate all feasible mitigation. The following mitigation measures are feasible and must be required of this Project:

1. Temporary noise barriers must be installed during Project construction.

O-14-31
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2. Where technically feasible, utilize only electrical construction equipment.
3. During construction, the developer shall require that all contractors turn off all construction equipment and delivery vehicles when not in use and prohibit idling in excess of 3 minutes.
4. Provide upgraded windows with a minimum Sound Transmission Class (STC) rating of 34 for all buildings, and/or require the installation of double-paned windows.
5. Keep new transportation facilities away from vibration sensitive areas.
6. When dealing with existing transportation facilities, obvious vibration causes, such as pot holes, pavement cracks, differential settlement in bridge approaches or individual pavement slabs, etc., may be eliminated by resurfacing.
7. Require the use of rubberized asphalt for construction of all roadways and parking areas.
8. Maintain quality pavement conditions that are free of bumps, pot holes, pavement cracks, differential settlement in bridge approaches or individual pavement slabs, etc.
9. Require resurfacing of roads.
10. Ban heavy trucks near vibration sensitive uses.
11. Use alternate construction methods and tools to reduce construction vibrations. Examples are pre-drilling of pile holes, avoiding cracking and seating methods for resurfacing concrete pavements near vibration sensitive areas, using rubber tired as opposed to tracked vehicles, placing haul roads away from vibration sensitive areas.
12. Schedule construction activities (particularly pile driving) for times when it does not interfere with vibration sensitive operations (e.g., night time).
13. To minimize the time during which any single noise-sensitive receptor is exposed to construction noise, construction shall be completed as rapidly as possible.

Solid Waste

O-14-32

The Project would only be served by a landfill with sufficient permitted capacity to accommodate the Project's solid waste disposal needs until 2025 at Otay Landfill and 2031 at Sycamore Canyon Landfill. The DEIR provides no mitigation to avoid the Project's significant cumulative impacts related to solid waste disposal. All feasible mitigation must be explored, including the development of fewer units.

Transportation and Traffic

O-14-33

The analysis of transportation and traffic impacts assumes the Project will be developed in two phases; Phase I consisting of 925 single-family dwelling units in the western development area, and Phase II completing buildout of the proposed land uses to full development. (DEIR p. 2.9-7) However, there is no requirement in the DEIR that Project construction actually occurs in separate phases. Overlap of "phases" and equipment use must be considered in determining predicted effects. The DEIR fails as an informational document by relying on, but not requiring, phasing of construction.

O-14-34 The DEIR states that manual adjustments were made to reflect land use changes in Otay Ranch Planning Area 17 (Traffic Analysis Zone (TAZ) 4135) that allows 296 single-family dwelling units so that only 1,000 project daily trips were going to/coming from TAZ 4135. (DEIR p. 2.9-7) This adjustment to 1,000 daily trips is inaccurate where the DEIR later states it is estimated that 296 single-family dwelling units at Otay Ranch Planning Area 17 would generate approximately 2,960 daily trips. (DEIR p. 2.9-29) Cumulative (year 2025) traffic and Year 2030 Plus Project Buildout must be analyzed with the correct average daily trip assumption for Otay Ranch Planning Area 17, and the EIR should be recirculated as impacts may understated.

O-14-35 The Project does not conform to the County's alternative transportation policies and would create a significant impact relative to alternative transportation plans. Specifically, County Goal M-8 to create public transit system that reduces automobile dependence and serves all segments of the population. The Project does not maximize opportunities for transit services to the Project site. There is no planned access to public transportation for transit-dependent segments of the population, such as the disabled, seniors, low income, and children. There is no public transportation access currently for the Project site, and the DEIR states that MTS expansion of bus service to the Project area is not anticipated at this time. (DEIR p. 2.9-40) The Project is not inconsistent with the County's alternative transportation policies and would result in significant impacts, which must be mitigated. Possible mitigation includes coordinating with SANDAG or MTS to provide capital facilities and funding to provide transit service to the Project area.

O-14-36 Mitigation to traffic impacts is ineffective and uncertain. By way of example, M-TR-1 requires the applicant to enter into an agreement with the County of San Diego to secure and construct the widening of Otay Lakes Road between the City/County Boundary and Project Driveway #1. Because this portion of Otay Lakes Road to be improved is outside the jurisdiction of the County of San Diego, mitigation measure M-TR-1 may be ineffective in minimizing the Project's significant traffic impacts. M-TR-4, 5, 6, 7, 8, 9, and 10 are similarly ineffective, and the Project cannot ensure that LOS standards will be met. Additional feasible mitigation such as the development of fewer units or the development of more multi-family dwelling units in lieu of single-family homes should be considered, especially where multi-family dwelling units generate fewer daily trips than single-family detached homes. (See SANDAG Brief Guide of Vehicular Traffic Generation Rates for the San Diego Region, April 2002 <http://www.sandag.org/uploads/publicationid/publicationid_1140_5044.pdf> [Single family detached homes are estimated to generate 10 trips/dwelling unit while any multi-family 6-20 DU/acre are expected to generate 8 trips/dwelling unit].)

Utilities and Service Systems

O-14-37 The DEIR states that the Project site does not currently have water service and is not within the service area of the Otay Water District (OWD), which is a member agency of the San Diego County Water Authority (SDCWA). The SDCWA is a member agency of the Metropolitan Water District (MWD), which provides access to imported water supplies from the Colorado River Aqueduct (CRA) and from northern California via the State Water Project (SWP). In order

O-14-37 | to obtain water service the Project would apply through LAFCO to annex into OWD, SDCWA,
Cont. | and MWD. (DEIR p. 3.7-1)

O-14-38 | The DEIR states that projected potable water demand for the Project is 1,418,918 gallons per day (mgd) or approximately 1,590 acre-feet per year (afy). (DEIR p. 3.7-11, Table 3.7-2; Appendix C-17 p. 2-3) However, this conflicts with the OWD Water Supply Assessment and Verification Report which states the expected potable water demand for the Project is 1,441,760 gallons per day (GPD) or about 1,615 afy. (DEIR Appendix C-18 p. 7, Table 4) The DEIR's discrepancy of the Project's potable water demands must be resolved.

O-14-39 | The DEIR states the MWD is contractually entitled to receive 1,911,000 acre-feet of water from the State Water Project (SWP). However, water supply contracts cannot be relied on to assess the projected water supply; environmental documents must analyze water supply impacts based on the actual water supply to be sufficient as an informational document. (*California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal. App. 4th 1219.) Based on the level of SWP supply development, state and federal environmental regulations, MWD estimates that actual SWP supplies will be 0.6 MAF in a dry year and 411,000 afy during critically dry years. (DEIR p. 3.7-3) The Overview of Water Service for the Otay Ranch Resort Village states Appendix A-3 of the MWD 2010 Regional UWMP contains justifications for the sources of supply projected to meet water demands in the region. (Appendix C-17 p. 3-4) The MWD Regional UWMP was prepared in November 2010. However, Governor's Proclamation No. 1-17-2014 issued on January 17, 2014 declared a State of Emergency in California due to severe drought conditions. As a result of the multi-year draught in California the Southern Sierra Snowpack was 5% of normal on April 1, 2015 and the MWD's SWP allocation as of May 12, 2015 was 382,300 af. (http://www.mwdh2o.com/mwdh2o/pages/yourwater/supply/res_storage/res_storage.pdf) Water supply impacts are not sufficiently analyzed in light of the severe multi-year draught. Moreover, while the DEIR states that water supply is known to be available until 2035, there is a lack of information regarding water supply beyond year 2035 and no mitigation is adopted. (DEIR p. 3.7-1 – 3.7-22) Available mitigation includes reducing the size of the Project and the resulting demand for water.

Energy Use and Conservation

O-14-40 | To the extent that the Project relies on certain Project design features to reduce energy consumption and/or greenhouse gases, these features must be adopted as enforceable CEQA mitigation measures.

Alternatives

O-14-41 | CEQA requires that an EIR describe and evaluate a reasonable range of alternatives to the proposed project. (State CEQA Guidelines § 15126.6 (a), (d).) Where an alternative is feasible, it must be adopted in lieu of the proposed project. (Pub. Res. Code § 21002.) Where an alternative is deemed infeasible, the agency must make findings of infeasibility. (Pub. Res. Code § 21081 (a)(3).) These findings shall be supported by substantial evidence in the record. (Pub. Res. Code

O-14-41 | § 21081.5.) A project may not be approved unless said findings are made. (Pub. Res. Code §
Cont. | 21081.)

O-14-42 | The range of alternatives selected for analysis fails to satisfy CEQA's mandates insofar as
alternatives focus on development in the western portions of the Project site. Only one
alternative—Alternative G—would develop the eastern portion of the Project site. Notably, the
western portion of the Project site is where the greatest area and/or populations of biological
resources exist including the federally listed Quino Checkerspot butterfly.

O-14-43 | First, Alternative B is more appropriately considered a “no project” alternative where it would
develop the site according to existing land use and zoning designations. (*See* State CEQA
Guidelines § 15126.6 (e)(3).) Additionally, Alternative B also does not meet the mandate of
CEQA as a “true” alternative to the proposed Project where impacts are either “similar” or
“greater” than those of the proposed Project. (*See* DEIR pp. 4.0-10 – 4.0-13) For instance
Alternative B is determined to have “greater” biological impacts than the proposed Project
including impacts to the Quino checkerspot butterfly, vernal pools, and wildlife corridors. (DEIR
p. 4.0-11) Indeed, in comparing the proposed Project to the alternative of developing the site
according to existing land use and zoning designations (Alternative B) the Project appears far
superior. This is not the goal of CEQA alternatives analysis. (*See* State CEQA Guidelines §
15126.6 (b) [because EIR must identify ways to mitigate or avoid the significant effects of a
project, the purpose of alternatives analysis is to focus on alternatives which are capable of
avoiding or substantially lessening any significant effects of the project].)

O-14-44 | Second, Alternatives B through F involve a development footprint on the western portion of the
Project site in or around locations of Quino checkerspot butterfly and other biological resources
including vernal pools. Alternatives should focus on a development pattern which would
minimize impacts to biological resources.

O-14-45 | More specifically, Alternatives C, D, E, and F would develop “only” the western portion of the
Project area. Alternatives C and D are determined to have “less overall impacts” to biological
resources, yet the DEIR acknowledges that Alternatives C and D would provide less
conservation or preservation of high quality habitat for the Quino checkerspot butterfly. (DEIR
pp. 4.0-14 – 4.0-15) Alternatives E and F are not discussed in terms of impacts to the Quino
checkerspot butterfly, yet it can be assumed from the development footprint that impacts would
occur. Accordingly, none of the alternatives apart from Alternative G are capable of avoiding or
substantially lessening the project impacts in terms of biological resources.

Furthermore, the environmentally superior alternative—Alternative G—must be adopted in lieu
of the proposed Project. (DEIR p. 4.0-28) Alternative G would develop 224 acres of the Project
site including: 465 single-family detached units on 151.2 acres, a 2.0-acre public safety site, and
a 17.4-acre resort site in the same location as the proposed Project. Approximately 1,107 acres of
Preserve Open Space and 538 acres of Non Preserve Open Space would be provided. The
elementary school site would not be included. Notably, development under Alternative G will be
located in the eastern portion of the Project site where there are fewer biological resources. (*See*
Figure 4.0-6) Alternative G would offer other environmental benefits: it will decrease traffic

volumes by approximately 15,662 ADT as compared to the proposed Project. Alternative G would “reduce or avoid impacts associate with aesthetics, air quality, biological resources, cultural resources, noise and transportation and traffic when compared to the proposed Project.” (DEIR p. 4.0-28) Alternative G not only reduces impacts, but also meets most of the Project objectives, including to:

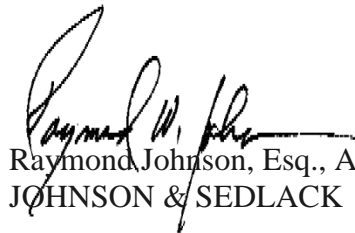
- Implement the goals, objectives and policies of the adopted Otay SRP, the Otay Ranch RMP, and the County MSCP Subarea Plan South County segment;
- Decrease the intensity of development at higher elevations away from Lower Otay Lake;
- Establish an executive level, “specialty” housing enclave within Otay Ranch that attracts business owners and employers;
- Create increased housing diversity within Otay Ranch by balancing higher densities associated with Otay Ranch’s multi-family development with lower density, predominately single-family homes to ensure a balance of housing opportunities;
- Ensure public facilities are provided in a timely manner; and
- **Preserve the Project site’s most sensitive resources, including the Quino checkerspot butterfly and higher quality vernal pools.**

Conclusion

The DEIR omits significant information and analysis regarding the potential impacts of the Project that must be remedied. In addition, a variety of mitigation measures are feasible for the Project and should be incorporated in any later EIR. Additional alternatives capable of meeting this Project’s objectives with far fewer environmental consequences should also be considered. The EIR should be amended to incorporate this information and be recirculated for public review.

Thank you for your consideration of these comments.

Sincerely,



Raymond Johnson, Esq., AICP, LEED GA
JOHNSON & SEDLACK

Additional Attachments & Electronic Citations

- | | |
|---------|---|
| O-14-47 | 1. <i>Diesel and Health in America: the Lingering Threat</i> , Clean Air Task Force (February 2005),
< http://www.catf.us/resource/publications/files/Diesel_Health_in_America.pdf > |
| O-14-48 | 2. South Coast Air Quality Management District, <i>Guidance Document for Addressing Air Quality Issues in General plans and Local Planning</i> , (May 6, 2005). |
| O-14-49 | 3. <i>Technical Support Document for Cancer Potency Factors: Methodologies for derivation, listing of available values, and adjustments to allow for earlier life stage exposures</i> , California EPA OEHHA Air Toxicology and Epidemiology Branch, April 2009, p. 3. < http://www.oehha.ca.gov/air/hot_shots/pdf/TSDCPFApril_09.pdf > |
| O-14-50 | 4. U.S. Department of Transportation, Federal Highway Administration. (August 2006) <i>Construction Noise Handbook, Chapters 3, 4, and 9</i>
< http://www.fhwa.dot.gov/environment/noise/constructoni_noise/handbook/index.cfm > |
| O-14-51 | 5. Electronic Library of Construction Occupational Safety and Health (November/December 2002) <i>Construction Noise: Exposure, Effects, and the Potential for Remediation; A Review and Analysis</i> . |
| O-14-52 | 6. U.S. Department of Housing and Urban Development. (March 1985) <i>The Noise Guidebook</i> . |
| O-14-53 | 7. Suter, Dr. Alice H., Administrative Conference of the United States. (November 1991) <i>Noise and Its Effects</i> . |
| O-14-54 | 8. California Air Pollution Control Officers Association. (January 2008) <i>CEQA & Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act</i> . |

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Johnson & Sedlack, an Environmental Law firm representing plaintiff environmental groups in environmental law litigation, primarily CEQA.

City Planning:

Current Planning

- Two years principal planner, Lenexa, Kansas (consulting)
- Two and one half years principal planner, Lee's Summit, Missouri
- One year North Desert Regional Team, San Bernardino County
- Twenty-five years subdivision design: residential, commercial and industrial
- Twenty-five years as applicants representative in various jurisdictions in: Missouri, Texas, Florida, Georgia, Illinois, Wisconsin, Kansas and California
- Twelve years as applicants representative in the telecommunications field

General Plan

- Developed a policy oriented Comprehensive Plan for the City of Lenexa, Kansas.
- Updated Comprehensive Plan for the City of Lee's Summit, Missouri.
- Created innovative zoning ordinance for Lenexa, Kansas.
- Developed Draft Hillside Development Standards, San Bernardino County, CA.
- Developed Draft Grading Standards, San Bernardino County.
- Developed Draft Fiscal Impact Analysis, San Bernardino County

Environmental Analysis

- Two years, Environmental Team, San Bernardino County
 - Review and supervision of preparation of EIR's and joint EIR/EIS's
 - Preparation of Negative Declarations
 - Environmental review of proposed projects
- Eighteen years as an environmental consultant reviewing environmental documentation for plaintiffs in CEQA and NEPA litigation

Representation:

- Represented various clients in litigation primarily in the fields of Environmental and Election law. Clients include:

- Sierra Club
- San Bernardino Valley Audubon Society
- Sea & Sage Audubon Society
- San Bernardino County Audubon Society
- Center for Community Action and Environmental Justice
- Endangered Habitats League
- Rural Canyons Conservation Fund
- California Native Plant Society
- California Oak Foundation
- Citizens for Responsible Growth in San Marcos
- Union for a River Greenbelt Environment
- Citizens to Enforce CEQA
- Friends of Riverside's Hills
- De Luz 2000
- Save Walker Basin
- Elsinore Murrieta Anza Resource Conservation District

Education:

- B. A. Economics and Political Science, Kansas State University 1970
- Masters of Community and Regional Planning, Kansas State University, 1974
- Additional graduate studies in Economics at the University of Missouri at Kansas City
- J.D. University of La Verne. 1997 Member, Law Review, Deans List, Class Valedictorian, Member Law Review, Published, Journal of Juvenile Law

Professional Associations:

- Member, American Planning Association
- Member, American Institute of Certified Planners
- Member, Association of Environmental Professionals

Johnson & Sedlack, Attorneys at Law

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12/97- Present

Principal in the environmental law firm of Johnson & Sedlack. Primary areas of practice are environmental and election law. Have provided representation to the Sierra Club, Audubon Society, AT&T Wireless, Endangered Habitats League, Center for Community Action and Environmental Justice, California Native Plant Society and numerous local environmental groups. Primary practice is writ of mandate under the California Environmental Quality Act.

Planning-Environmental Solutions

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Temecula, CA 92590
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8/94- Present

Served as applicant's representative for planning issues to the telecommunications industry. Secured government entitlements for cell sites. Provided applicant's representative services to private developers of residential projects. Provided design services for private residential development projects. Provided project management of all technical consultants on private developments including traffic, geotechnical, survey, engineering, environmental, hydrogeological, hydrologic, landscape architectural, golf course design and fire consultants.

San Bernardino County Planning Department

Environmental Team
385 N. Arrowhead
San Bernardino, CA 92415
(909) 387-4099

6/91-8/94

Responsible for coordination of production of EIR's and joint EIR/EIS's for numerous projects in the county. Prepared environmental documents for numerous projects within the county. Prepared environmental determinations and environmental review for projects within the county.

San Bernardino County Planning Department

General Plan Team
385 N. Arrowhead
San Bernardino, CA 92415
(909) 387-4099

6/91-6/92

Created draft grading ordinance, hillside development standards, water efficient landscaping ordinance, multi-family development standards, revised planned development section and fiscal impact analysis. Completed land use plans and general plan amendment for approximately 250 square miles. Prepared proposal for specific plan for the Oak Hills community.

San Bernardino County Planning Department

North Desert Regional Planning Team
15505 Civic
Victorville, CA
(619) 243-8245

6/90-6/91

Worked on regional team. Reviewed general plan amendments, tentative tracts, parcel maps and conditional use permits. Prepared CEQA documents for projects.

Broadmoor Associates/Johnson Consulting

229 NW Blue Parkway
Lee's Summit, MO 64063
(816) 525-6640

2/86-6/90

Sold and leased commercial and industrial properties. Designed and developed an executive office park and an industrial park in Lee's Summit, Mo. Designed two additional industrial parks and residential subdivisions. Prepared study to determine target

industries for the industrial parks. Prepared applications for tax increment financing district and grants under Economic Development Action Grant program. Prepared input/output analysis of proposed race track. Provided conceptual design of 800 acre mixed use development.

Shepherd Realty Co.

Lee's Summit, MO

6/84-2-86

Sold and leased commercial and industrial properties. Performed investment analysis on properties. Provided planning consulting in subdivision design and rezoning.

Contemporary Concepts Inc.

Lee's Summit, MO

9/78-5/84

Owner

Designed and developed residential subdivision in Lee's Summit, Mo. Supervised all construction trades involved in the development process and the building of homes.

Environmental Design Association

Lee's Summit, Mo.

Project Coordinator

6/77-9/78

Was responsible for site design and preliminary building design for retirement villages in Missouri, Texas and Florida. Was responsible for preparing feasibility studies of possible conversion projects. Was in charge of working with local governments on zoning issues and any problems that might arise with projects. Coordinated work of local architects on projects. Worked with marketing staff regarding design changes needed or contemplated.

City of Lee's Summit, MO

220 SW Main

Lee's Summit, MO 64063

Community Development Director

4/75-6/77

Supervised Community Development Dept. staff. Responsible for preparation of departmental budget and C.D.B.G. budget. Administered Community Development Block Grant program. Developed initial Downtown redevelopment plan with funding from block grant funds. Served as a member of the Lee's Summit Economic Development Committee and provided staff support to them. Prepared study of available industrial sites within the City of Lee's Summit. In charge of all planning and zoning matters for the city including comprehensive plan.

Howard Needles Tammen & Bergendoff

9200 Ward Parkway

Kansas City, MO 64114

(816) 333-4800

Economist/Planner

5/73-4/75

Responsible for conducting economic and planning studies for Public and private sector clients. Consulting City Planner for Lenexa, KS.

Conducted environmental impact study on maintaining varying channel depth of the Columbia River including an input/output analysis. Environmental impact studies of dredging the Mississippi River. Worked on the Johnson County Industrial Airport industrial park master plan including a study on the demand for industrial land and the development of target industries based upon location analysis. Worked on various airport master plans. Developed policy oriented comprehensive plan for the City of Lenexa, KS. Developed innovative zoning ordinance heavily dependent upon performance standards for the City of Lenexa, KS.